



CHAPTER SEVEN – THIRD PARTY SERVICE PROVIDER REQUIREMENTS

SECTION 7.1 Third Party Service Provider Agreements

Each Third Party Service Provider shall enter into a Third Party Provider Agreement stating its agreement to comply with and be bound by these Rules, as such may be amended from time to time. These Rules do not restrict any other terms or conditions of the Third Party Provider Agreement, provided that such terms and conditions do not conflict with these Rules, and do not relieve the Third Party Service Provider from any registration, certification or other requirement imposed by a Network in which such Third Party Service Provider participates. Each Issuer, Designated Agent or Acquirer entering into a Third Party Provider Agreement must keep a copy of each of its Third Party Provider Agreements at its headquarters. Each Issuer and Acquirer entering, directly or through a Designated Agent, into a Third Party Provider Agreement shall be jointly and severally liable for the performance or failure to perform by the Third Party Service Provider of any of the duties of such Issuer or Acquirer hereunder.

SECTION 7.2 Registration

Each Issuer, Designated Agent or Acquirer shall provide to NACHA a list of the Third Party Service Providers with which it has entered into a Third Party Provider Agreement.

SECTION 7.3 Requirements for All Third Party Service Providers

Each Third Party Service Provider Agreement shall be executed by an officer of an Issuer, Designated Agent or Acquirer and shall contain the substance of the following provisions.

- a. **Capacity.** Each Third Party Service Provider acting on behalf of any Issuer, Designated Agent or Acquirer, shall comply with the Rules applicable to such Issuer, Designated Agent or Acquirer, in the provision of its services.
- b. **Security Requirements.** Each Third Party Service Provider must meet all applicable security requirements under Chapter 9.
- c. **Subcontracting.** A Third Party Service Provider may not subcontract its services, except that a Designated Agent of an Issuer may enter into an agreement with a Network for such Network to also act as Designated Agent of the Issuer. *(Amended September 27, 1996)*
- d. **Acquirer-Controlled Functions.** If the Third Party Provider Agreement is with an Acquirer, the following functions are to be controlled by the Acquirer:
 - (i) approval and review of Merchants and execution of Merchant Agreements
 - (ii) establishment of Terminal encryption and placement procedures
 - (iii) Settlement with Merchants
- e. **Agreement Termination.** Each Third Party Provider Agreement shall be terminable for a violation of these Rules.



- f. **Audits.** If NACHA or the Issuer or Acquirer for a Third Party Service Provider has reasonable cause to question the accuracy, timeliness, completeness or reliability of any activities undertaken by the Third Party Service Provider under these rules or the compliance of the Third Party Service Provider with these Rules, such Third Party Service Provider shall provide to the Acquirer, NACHA and its Issuer or Acquirer full and free access to all records and systems related to its performance under its Third Party Provider Agreement for the purpose of examination or auditing such performance and compliance. At NACHA's discretion, such examination or audit may be conducted, at the Third Party Service Provider's expense by (a) an outside auditor of the Third Party Service Provider's choosing, (b) NACHA or (c) a third party retained by NACHA. If such examination or audit reveals any exception to the Third Party Service Provider's compliance with these Rules, the Third Party Service Provider shall promptly remedy such exception. To the extent feasible, NACHA shall coordinate any such examination or audit with and rely upon any comparable examination or audit performed by a Network. These Rules shall not limit the authority of a Government Entity to audit a Participant under any agreement or Applicable law. The agreements between Participants that are required by these Rules may provide for additional audit requirements between such Participants.
- g. **Settlement Funds.** No Third Party Service Provider, other than a Network, may be a party to Settlement or receive Settlement funds other than through an Issuer or Acquirer, provided that a Processor may act as an agent of one or more Acquirers for purposes of Settlement and reconciliation.
- h. **Protection of the QUEST Mark.** Only Issuers and Acquirers are licensed to use the Quest Mark pursuant to Chapter 11 of these Rules. A Third Party Service Provider may utilize the QUEST Mark on behalf of an Issuer or Acquirer solely in accordance with the standards regarding the use of the QUEST Mark in Chapter 11 and may not misrepresent any aspect of the handling of Transactions hereunder, including the pricing of such Transactions. No Third Party Provider may represent or imply that NACHA endorses its products or services or that it is other than a contractor or representative of its Issuer or Acquirer for purposes of its activities under these Rules. *(Amended December 16, 2008)*

SECTION 7.4 Government Entities as Third Party Service Providers

If a Government Entity engages in Merchant solicitation, sales or servicing, other than approval of Merchants to participate in an EBT Program, or acts as an ESSP, such Government Entity shall enter into a Third Party Provider Agreement that contains the substance of Subsections 7.3(b) and 7.3(h).

SECTION 7.5 ISO Agreements

Each Acquirer and Processor that enters into an agreement with an independent sales organization for the purpose of merchant sales and servicing shall include the substance of the following provisions in each such agreement:

- a. Employees, agents or other representatives of the independent sales organization must clearly and accurately identify themselves and the independent sales organization in any oral or written communication with retailers and merchants. Such individuals and entities may not state, suggest or imply that they are representatives of QUEST®, NACHA, any governmental entity or any Issuer. *(Amended December 16, 2008)*
- b. Employees, agents or other representatives of the independent sales organization may not state, suggest or imply that they are or represent the only authorized company able to provide any EBT-related services, that any merchant or retailer will be foreclosed from accepting EBT transactions if such merchant or retailer does not enter into an agreement or arrangement with the independent sales organization or that there is any time limit within which such merchant or retailer must arrange to be able to accept EBT transactions.



- c. Employees, agents or other representatives of the independent sales organization must clearly, completely and accurately describe in writing to each merchant or retailer such independent sales organization's plans for installation of terminals, training of the merchant or retailer's employees, maintenance options, terminal lease or purchase costs and transaction fees.
- d. Each independent sales organization shall provide to each retailer, prior to entering into an agreement with such retailer, a written disclosure of official contact information for the EBT Program for the State in which the retailer is located as provided by the Issuer for that State.
- e. Each independent sales organization shall provide the following written statement in a clear and conspicuous manner to each merchant or retailer prior to the merchant or retailer entering into an agreement with such independent sales organization for EBT related products or services: "I am a representative of [insert company name]. I am NOT a representative of Quest®, NACHA, any governmental entity or any Issuer. You have a right to receive, review and keep a written description of the services that we offer and the prices for those services. You have a right to compare that information to the products and services that can be provided by other companies."
(Amended December 16, 2008)

This amendment shall apply to all agreements between Acquirers or Processors and ISOs that are entered or renewed more than 60 days after approval of this amendment by NACHA. With respect to all other agreements between Acquirers and Processors and ISOs, this amendment shall take effect 12 months after approval by NACHA and shall require amendment of the pre-existing agreements. *(Amended May 9, 2000 and December 16, 2008)*